

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MANUEL ANTONIO HERRERA HERNANDEZ,

Plaintiff,

Case No.: 21-CV-1057

v.

DAVID CHURCHILL, et al.,

Defendants.

DAVID CHURCHILLS' ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant, David Churchill, by his counsel Crivello Carlson, S.C., submits this Answer to Plaintiff's Complaint as follows:

1. Answering paragraph A and its subparagraphs entitled "Parties", lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

2. Answering paragraph B, "Statement of Claim", subparagraph 1, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

3. Answering paragraph B, subparagraph 2, of "Statement of Claim", lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

4. Answering paragraph B, subparagraph 3, of "Statement of Claim", lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

5. Answering paragraph B, subparagraph 4, of “Statement of Claim” denies that plaintiff’s allegations are accurate or complete and, therefore, denies the same.

6. Answering paragraph B, subparagraph 5, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

7. Answering paragraph B, subparagraph 6, of “Statement of Claim”, denies.

8. Answering paragraph B, subparagraph 7, of “Statement of Claim”, denies.

9. Answering paragraph B, subparagraph 8, of “Statement of Claim”, denies.

10. Answering paragraph B, subparagraph 9, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

11. Answering paragraph B, subparagraph 10, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

12. Answering paragraph B, subparagraph 11, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

13. Answering paragraph B, subparagraph 12, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

14. Answering paragraph B, subparagraph 13, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

15. Answering paragraph B, subparagraph 14, of “Statement of Claim”, lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

16. Answering paragraph B, subparagraph 15, of “Statement of Claim”, denies that plaintiff’s allegations are accurate or complete and, therefore, denies the same.

17. Answering paragraph C entitled “Jurisdiction”, lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and, therefore, denies the same.

18. Answering paragraph D entitled “Relief Wanted”, lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and, therefore, denies the same. As further answer, this answering defendant denies any wrongdoing, improper conduct or violation of plaintiff’s constitutional rights as alleged or otherwise by this answering defendant or any other officer, employee or official of Dodge County. Further, denies that any conduct by this answering defendant or any other officer, employee or official of Dodge County caused any injury to the plaintiff.

19. Answering paragraph E entitled “Jury Demand”, lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and, therefore, denies the same.

AFFIRMATIVE DEFENSES

As and for affirmative defenses to plaintiff’s Complaint, this defendant submits the following:

- a. the injuries and damages sustained by the plaintiff, if any, were caused in whole or in part by the acts or omissions of the plaintiff and his failure to mitigate;
- b. the injuries and damages sustained by the plaintiff, if any, were caused in whole or in part by the acts or omissions of persons other than this answering defendant;
- c. the Complaint contains claims which fail to state a claim upon which relief may be granted as against this answering defendant;

- d. the defendant is immune from suit under common law and statutory immunities and privileges including but not limited to discretionary and qualified immunity;
- e. plaintiff failed to state a claim for and is not legally entitled to punitive damages, compensatory damages, or attorneys' fees and costs;
- f. any and all injuries or damages sustained by the plaintiff are the result of an intervening and/or superseding cause preventing plaintiff a right of recovery against this defendant;
- g. plaintiff may have failed to name indispensable and necessary parties including, but not limited to, subrogated health care providers;
- h. plaintiff has failed to exhaust administrative remedies before pursuing this action;
- i. to the extent plaintiff is bringing a state law claim, the claims are subject to the limitations and immunities in Wis. Stats. Sec. 893.80; and
- j. to the extent plaintiff is bringing a state law claim, plaintiff failed to comply with the notice provisions contained within Wis. Stats. Sec. 893.80 as regards to the claims against this answering defendant.

WHEREFORE, defendant, David Churchill, demands judgment as follows:

- a. for a dismissal of the Plaintiff's Complaint upon its merits;
- b. for the costs and disbursements of this action;
- c. for reasonable actual attorney fees per 42 USC § 1988; and
- d. for such other relief as this court deems just and equitable.

DEFENDANT HEREBY DEMANDS A 12-PERSON JURY.

Dated this 21st day of November, 2022.

BY: s/Amy J. Doyle
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